

1 ~~Rule 8.5. Jurisdiction.~~

2 ~~A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority~~
3 ~~of this jurisdiction although engaged in practice elsewhere.~~

4 ~~COMMENT~~

5 ~~In modern practice lawyers frequently act outside the territorial limits of the~~
6 ~~jurisdiction in which they are licensed to practice, either in another state or outside the~~
7 ~~United States. In doing so, they remain subject to the governing authority of the~~
8 ~~jurisdiction in which they are licensed to practice. If their activity in another jurisdiction is~~
9 ~~substantial and continuous, it may constitute practice of law in that jurisdiction. See Rule~~
10 ~~5.5.~~

11 ~~If the rules of professional conduct in the two jurisdictions differ, principles of conflict~~
12 ~~of laws may apply. Similar problems arise when a lawyer is licensed to practice in more~~
13 ~~than one jurisdiction.~~

14 ~~Where a lawyer is licensed to practice law in two jurisdictions which impose~~
15 ~~conflicting obligations, applicable rules of choice of law may govern the situation. A~~
16 ~~related problem arises with respect to practice before a federal tribunal, where the~~
17 ~~general authority of the states to regulate the practice of law must be reconciled with~~
18 ~~such authority as federal tribunals may have to regulate practice before them.~~

19 Rule 8.5. Disciplinary Authority; Choice of Law.

20 (a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject
21 to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct
22 occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary
23 authority of this jurisdiction if the lawyer provides or offers to provide any legal services
24 in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this
25 jurisdiction and another jurisdiction for the same conduct.

26 (b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the
27 rules of professional conduct to be applied shall be as follows:

28 (b)(1) for conduct in connection with a matter pending before a tribunal, the rules of
29 the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide
30 otherwise; and

(b)(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occur, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

Comment

Disciplinary Authority

[1] It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. See Rules 6 and 22, Utah Rules of Lawyer Discipline and Disability.

[1a] Utah has declined to adopt the portion of ABA Model Rule 8.5 Comment [1] providing that a lawyer who is subject to Utah disciplinary authority under Rule 8.5(a) is deemed to have appointed a court-designated official to receive service of process. This would be a substantive procedural rule that is not appropriate for these Rules. The last sentence of ABA Comment [1] is an unnecessary comment on jurisdiction in civil matters, and Utah has declined to adopt it.

Choice of Law

[2] A lawyer may be potentially subject to more than one set of rules of professional conduct that impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.

[3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interests of both clients and the profession (as well as the

bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty.

[4] Paragraph (b)(1) provides that, as to a lawyer's conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer's conduct occur, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occur, where the tribunal sits or in another jurisdiction.

[5] When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule.

[6] If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this Rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct and in all events should avoid proceeding against a lawyer on the basis of now-inconsistent rules.

[7] The choice-of-law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise.